IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO.19481 of 1999

Between:

P. Balaswamy Reddy, s/o. Arogyam Reddy, Secondary Grade Teacher (Unaided), 36 years, St. Joseph's High School, Pedda Kotala, Nandyal Mandal, Kurnool District.

...PETITIONER

AND

1. The Superior Generalate, St.Ann’s Generalate, Madras.
2. The Correspondent, St.Joseph Upper Primary English Medium School, Sanjeevanagar, Nandyal.
3. The District Educational Officer, Kurnool.
4. The Regional Director of School Education, Cuddapah.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not absorbing the petitioner in the Secondary Grade Aided post which is vacant under the Management as illegal, improper, unjust, arbitrary and contrary to law and further declare the notification issued in Vaartha Telugu Daily dated 01.07.1999 as illegal, improper, unjust, arbitrary and contrary to law and further direct the respondents to absorb the petitioner in the said aid post with effect from the date of the vacancy with all consequential benefits including monetary, seniority etc.

Counsel for the Petitioner: MR.K.G.KRISHNA MURTHY
Counsel for the Respondent Nos.1 and 2: MR.V.JAGAPATHI
Counsel for the Respondent Nos.3 and 4: GP FOR SCHOOL EDUCATION

The Court made the following:

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO.19481 of 1999

ORDER:

This Writ Petition is filed seeking a mandamus declaring the action of the respondents in not absorbing the petitioner in the Secondary Grade Aided Post vacant under the Management and to declare the notification issued on 01.07.1999 calling for the applications to fill up the said post, as arbitrary and illegal, with a consequential direction to the respondents to consider the case of the petitioner for absorbing in the said vacancy.

It is the case of the petitioner that he passed B.Sc., B.Ed., and got registered his name in the Employment Exchange. The first respondent/management notified one post of Secondary Grade Teacher (Unaided) and called for applications from eligible candidates. In pursuance of the said notification, the petitioner filed an application. He was called for interview and subjected to selection by the Staff Selection Committee on 23.10.1990. He was selected and the Management issued proceedings in Rc.No.2/90 dated 24.10.1990 appointing him as Secondary Grade Teacher (Unaided) in the scale of Rs.1010-35-1360-40-1800. Further, the appointment of the petitioner was initially approved by the District Educational Officer and later by the Regional Director of School Education on 22.04.1991. Thus,

he had been working since then in the said unaided post with a fond hope that the Management will consider his case for absorption into regular aided vacancy as and when it arises. He was discharging his duties to the complete satisfaction of the authorities. There are four schools under the Management. They are St.Joseph (Girls) High School, Nandyal, St.Joseph High School, Peddakottala, St.Joseph Upper Primary School, Nandyal and St.Joseph Elementary School, Peddakotala. All the four schools are under the management of the first respondent prior to the year 1996 and different correspondents were there for the above schools. However, in view of the proceedings dated 31.08.1996 issued by the fourth respondent, all the schools under one management in a district were treated as one unit. Thus, for all purposes, the schools were constituted as one unit namely, for the purpose of appointment, promotion, absorption and control of first and second respondents. In fact, the Management has been affecting transfers between one school to another school after making the four schools as a single unit after 01.07.1996. While so, a vacancy in the post of Secondary Grade Teacher (aided) arose at St.Joseph (Girls) High School, Nandyal (English Medium). The first and second respondents instead of recommending the name of the petitioner, they have notified the vacancy in the Vaartha Telugu Daily newspaper dated 01.07.1999 inviting applications from the general public. This action of the respondents is illegal and arbitrary. As per the guidelines issued by the authorities from time to time, the Management is bound to offer and consider any aided vacancy that arises in any one of the schools as per the seniority in the unaided cadre. In fact, the first and the second respondents have maintained a common seniority list of the teachers working in all the four schools

and the petitioner, admittedly, is the senior most teacher eligible to be selected to the vacant post for which the notification was issued on 01.07.1999. For the reasons best known to the respondents they have not considered or recommended the name of the petitioner for absorption in the regular vacancy of Secondary Grade Teacher (aided) in St.Joseph (Girls) High School, Nandyal (English Medium). Hence, the petitioner filed this Writ Petition.

On behalf of the first and second respondents, a counter has been filed. Likewise on behalf of the third and fourth respondents, a counter has been filed. In both the counters, the allegations made by the petitioner are denied. It is the case of the respondents that the petitioner was appointed against the unaided vacancy in St.Joseph High School, Peddakottala, which is Telugu Medium School and as such he is not entitled for being considered against the aided vacancy arisen in English Medium School at Nandyala. Therefore, the case of the petitioner was not considered.

I have given my earnest consideration to the respective submissions made by the learned counsel on both sides and also perused the material made available on record. At the outset, I am of the opinion that the petitioner has been denied his rightful opportunity of being absorbed into an aided vacancy that arisen at St.Joseph (Girls) High School at Nandyal under the same management.

The learned counsel brought to my notice the minutes of the meeting held on 17.09.1993 with the Director of School Education and Officers on Inter District Transfers and Conversion of the posts, wherein it is stated as under:

"In fact, the Management of these schools which are running more than one

> Institution have to treat all the schools as one unit and common seniority has to be drawn up for the staff working in all the schools put together. According to the existing rules, a person appointed to an unaided post in a school should be absorbed into aided posts based on the seniority whenever a vacancy arises in an aided post. This is because persons working in that particular category of post and posts became eligible for service benefits like pension, gratuity etc."

This was communicated to all the officers for opinion and for necessary action.

Further, the memorandum No.18573/PS.1/2000-20, dated 19.07.2004 issued by the Principal Secretary to Government also categorically indicates that absorption of unaided teachers into grant in aid posts and the earlier orders issued, were withdrawn.

In fact there is no bar to absorb a teacher working in unaided post into aided post of the same school without inviting any applications from out side. In this regard, the learned counsel for the petitioner relied upon the judgment dated 07.11.2003, rendered by this Court in W.P.No.11332 of 2002, which reads as under:

> "The absorption of the petitioner from an unaided post to aided post, by no stretch of imagination, can be said to be a new selection justifying the official respondents to place him under apprenticeship in terms of the newly inserted sub-rule (1-a) to Rule 12 of the Rules framed by the Government in G.O.Ms.No.1, Education (P.S.2) Department, dated 01.01.1994 by reason of the orders issued by the Government in G.O.Ms.No.180, Education, dated 29.12.2000 and the subsequent amendment made thereto by reason of the orders issued by the Government in G.O.Ms.No.100, Education, dated 16.08.2001. The absorption of the petitioner from unaided post to aided post having been made in accordance with the Rules framed by the Government in G.O.Ms.No.1, Education (P.S.2) Department, dated 01.01.1994, and his selection also to the unaided post having been made in terms of the said Rules by following the due process of recruitment by the duly constituted Staff Selection Committee, which is a condition precedent for absorption of the petitioner from unaided post to aided post, the selection of the petitioner from an unaided post to aided post, cannot be treated as a new selection, so as to make the orders issued by the Government in G.O.Ms.No.180, Education, dated 29.12.2000 and G.O.Ms.No.100, Education, dated 16.08.2001 applicable to the petitioner justifying the

official respondents to place the petitioner under apprenticeship and pay him stipend."

Apart from the above, the learned counsel for the petitioner also drawn attention of this Court to the proceedings of the District Educational Officer, Kurnool in R.c.No.5814/C8/96 dated 23.08.1996 with regard to transferring the teachers from Telugu Medium School to English Medium School and transferring one teacher from one school to another school.

However, the learned Government Pleader has taken exception for the same saying that the said orders indicate as to whether the transfer was from aided post to another aided post or aided post to unaided post. That is not the question according to the Learned Government Pleader. Here, in this case, a person working in Telugu Medium School cannot be transferred to English Medium School. However, no rules or power came to my notice. The learned counsel for the petitioner has rightly stated that the persons working in English Medium School as well as in the Telugu Medium School are only S.G.B.T. Teachers. They have no special qualifications required to handle English Medium Schools separately. Therefore, the contention of the learned Government Pleader that a teacher who is working in Telugu Medium School cannot be transferred and absorbed against an aided vacancy that had arisen in English Medium School, cannot be accepted.

For all the above reasons, the petitioner is entitled for being absorbed against the vacancy of S.G.B.T.Teacher that had arisen and notified vacancy under the impugned proceedings dated 01.07.1999 in St.Joseph (Girls) High School, Nandyal

(English Medium).

The Writ Petition is accordingly allowed. The second respondent is directed to send the required proposals to respondent Nos.3 and 4 for considering the petitioner's case for absorption against an aided vacancy that had arisen in St.Joseph (Girls) High School (English Medium) at Nandyal within a period of two months from the date of receipt of a copy of this order. On such proposal being sent by respondent Nos.1 and 2, respondent Nos.3 and 4 would complete the process within a period of three months thereafter and communicate the same to the petitioner. No costs.

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(C.V.RAMULU, J)

30th June 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Thursday, the Thirtieth day of June Two thousand and five.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Superior Generalate, St.Ann’s Generalate, Madras.
2. The Correspondent, St.Joseph Upper Primary English Medium School, Sanjeevanagar, Nandyal.
3. The District Educational Officer, Kurnool.
4. The Regional Director of School Education, Cuddapah.
5. Two CCs to GP for School Education, High Court Buildings, Hyderabad (OUT).
6. Two CD copies.